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Empowering the Vulnerable to Speak Up: The migrant worker as whistleblower

Ian Fitzgerald and Ashley Savage, Northumbria University

Introduction

- Whistleblowing: *“disclosure by organisation members (former or current) of illegal, immoral or illegitimate practices under the control of their employers to persons or organisations who effect action.”*

Janet Near and Marcia Miceli, *Organizational dissidence: The case of whistle-blowing* (1985) 4 *Journal of Business Ethics* 1, 4.

- In return: whistleblower needs protection and concern needs to be addressed.
- Extra care needed in handling concerns raised by vulnerable migrant workers



Introduction (cont)

- Will explore the benefits and barriers to vulnerable migrant workers raising concerns.
- Will critically evaluate:
 - current legal protections available
 - the role of regulators and enforcement agencies.
- Will propose recommendations



GLA migrant worker whistleblowing example

“This government’s opposition to basic rights at work, and unwillingness to enforce those that exist, has helped make the UK the exploitation capital of Europe.... Free movement of workers shouldn’t let unscrupulous employers get something for nothing. Everyone should be paid a decent wage for doing a decent job.”

(TUC General Secretary Frances O’Grady)



GLA migrant worker whistleblowing example



Whistleblowing in 2008 by Bulgarian workers from Scotland [via](#) Bulgarian TV show [to](#) Bulgarian General Labour Inspectorate [to](#) GLA. Overall 250 Bulgarian workers came to work in Scottish agriculture. Introduced by two unlicensed agencies owned by same Bulgarian;

Workers under paid, deductions made and poorly housed (see picture on left);

NB. Restrictions on Bulgarians but supposed posted workers;

Case pursued by GLA using multi-agency approach, with cross-border engagement. In UK **David Leslie Fruits Limited** was **first labour user prosecuted**, licence refused to Bulgarian provider, in Bulgaria workers were identified as being falsely categorised as posted and a number of labour violations.

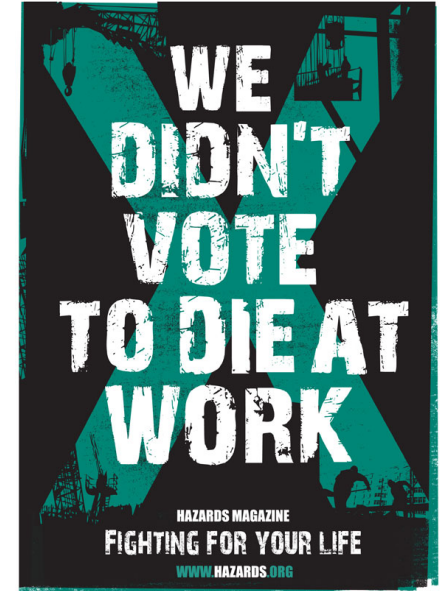
Note: Sheriff Lindsay Foulis stated that Leslie was "caught in a situation" and **limited fine** to £500.

Bulgarian workers were sent back to Bulgaria by coach via London and fruit farmer had to pay £19,000 cost.



Benefits

- Can benefit individual and fellow employees – e.g. rectifying a health and safety risk.
- Allows organisation to ‘sweep own doorstep’
- If internal: can de-escalate a situation and can often be handled informally.
- Where concerns are raised to a regulator or other enforcement body it can allow for *active* rather than *reactive* enforcement



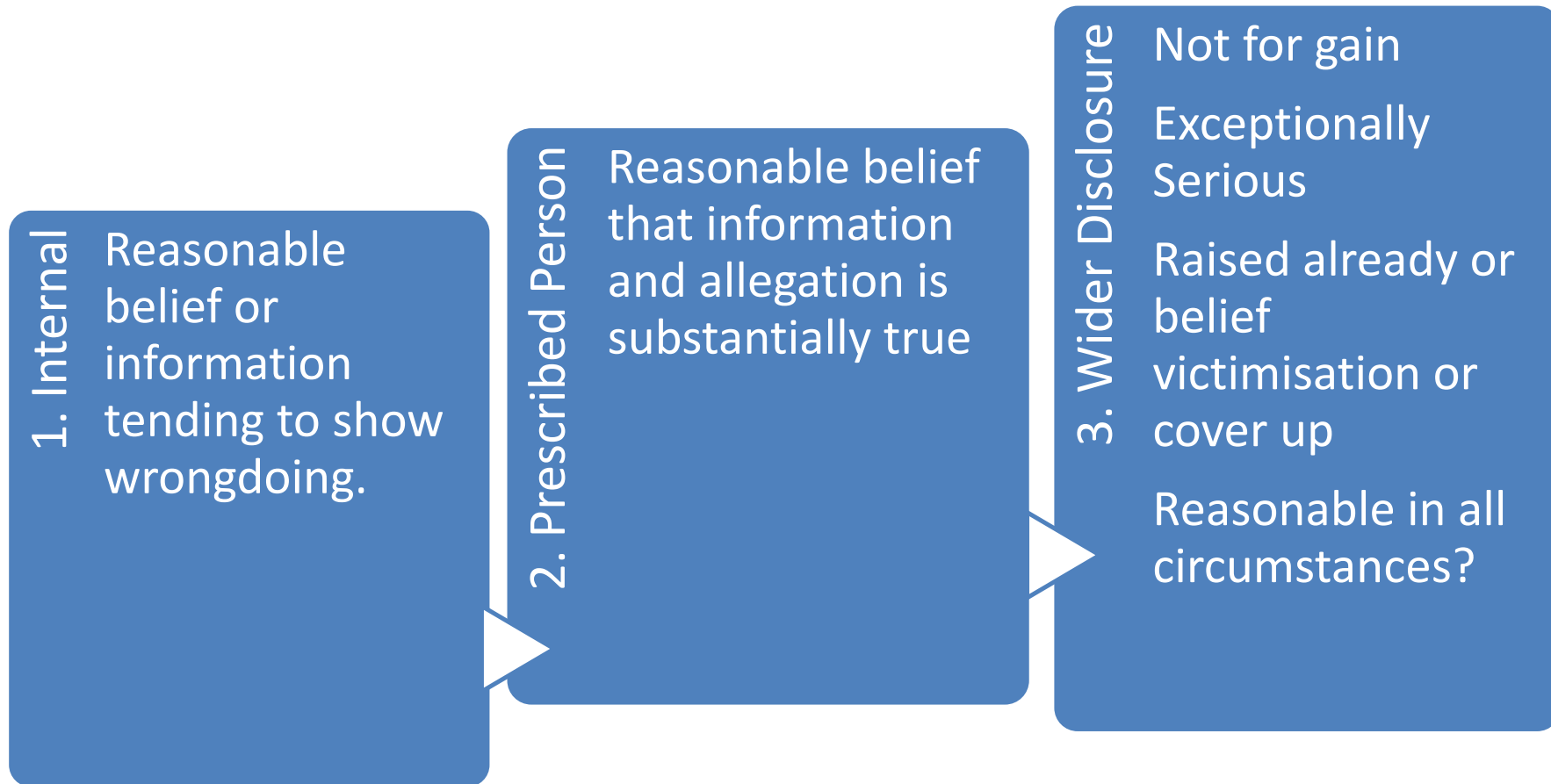
Barriers

- Language;
- Lack of awareness that whistleblowing concerns can be raised and the systems in place to facilitate this. With migrants general lack of information with regard to the country;
- Risk to employment position, access to local labour market;
- Impact on welfare, employer owned accommodation;
- If 3rd country workers risk to immigration status.
- Culture: Act of raising a concern or the concern itself does not cohere with values obtained from home jurisdiction.
- Legal protections complex.



Public Interest Disclosure Act 1998

Public Interest



Gangmasters Licencing Authority



The GLA has been a **pretty startling success**... critical for ... retailers to have a very clear view of ... supply chain, they go extra mile in ...looking at and into labour providers I think they're (retailers) growing in their awareness and their responsibilities to be **whistleblowers and informants**... I know of cases where that happens... They show signs of very good corporate citizenship.

(Director of the Ethical Trading Initiative)

Collaborative working: Her Majesty's Revenue and Customs (HMRC), United Kingdom Border Agency (UKBA), Serious Organised Crime Agency (SOCA), all UK Police Forces and the Employment Agency Standards Inspectorate (EAS) (GLA, 2011)



Gangmasters Licencing Authority



- Remit limited to (agriculture, horticulture, shellfish gathering and associated processing and packaging);
- Role to licence providers of workers in these sectors whilst labour users must must work with these;
- Guidance – no mention of Public Interest Disclosure Act 1998 (PIDA);
- GLA not a ‘prescribed person’ for the purposes of PIDA so more difficult to obtain protection;
- Anonymous reporting form – against good practice.



Other Regulators

- Savage and Hyde: Lack of consistency in the handling of whistleblowing concerns at both national and local level.
- National Audit Office report.
- Department for Business Innovation and Skills: recognition that regulators need to do more.

Public Interest Disclosure Act 1998

- No pre-detriment protection;
- Complex, many claimants are unrepresented;
- Can take a year to get to Employment Tribunal;
- Interim relief but problematic and low awareness;
- Flexible law but conversely does not prescribe steps for organisations to follow;
- Need a UK employment contract to obtain PIDA protection.

Conclusions

The GLA has made considerable efforts to target communications at vulnerable workers. Some ...do not have English as a first language, come from cultural backgrounds where direct engagement with government agencies is unfamiliar or intimidating. In extreme cases, direct intimidation and physical violence can be used by exploitative labour providers to prevent whistle-blowing. ...

The GLA faces significant challenges in raising the profile of its work with some of the workers at the margins of the system. (BIS, 2009)

*There is **currently precious little incentive** for migrant workers to “whistle-blow” to the GLA.*

(Wilkinson, Craig and Gaus, 2010)

Conclusions

- Next government should establish an independent inquiry into supermarket buyer activities;
- Multi-agency strategy which places the individual at the heart but develops long-term relationship with employers and users of labour;
- Regulators and enforcement agencies - need for improvement in handling of whistleblowing concerns – especially when from vulnerable migrant workers;
- Strong argument for widening remit of Gangmaster's Licencing Authority;
- Need for improved guidance/advice for prospective whistleblowers;
- Need to work with communities;
- Employment based agencies such as GLA should involve designated trade unions and relevant community support groups in inspections.